

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff/Respondent,	§	
	§	
V.	§	CR. No. C-04-214 (4)
	§	C.A. No. C-06-166
SIMON TORRES-MONGES,	§	
	§	
Defendant/Movant.	§	

**ORDER GRANTING APPLICATION FOR LEAVE TO
PROCEED *IN FORMA PAUPERIS* AND COLLECTION ORDER**

Pending is Simon Torres-Monges' ("Torres" or "Appellant") motion for leave to proceed on appeal *in forma pauperis* from the District Court's denial of his motion pursuant to 28 U.S.C. § 2255 (D.E. 208),¹ with supporting affidavit. (D.E. 209.) The motion was received by the Clerk on March 12, 2007, but is dated March 8, 2007 and the envelope it arrived in is postmarked March 9, 2007. (D.E. 208 at 2, 7.) Torres' appeal was dismissed by the Fifth Circuit on March 9, 2007 for failure to pay the docketing fee (D.E. 207), a fact Torres likely did not know when he mailed his *ifp* motion. Presumably, however, Torres would nonetheless continue seek *in forma pauperis* status so that he may attempt to reinstate his appeal. Accordingly, the undersigned addresses his motion, rather than treating it as moot.

Torres' motion reflects that, at the time of his application, he had an account balance of \$200.67 in his inmate account, and that in the six months preceding his motion, his average balance was \$109.00. His application also indicates that he is employed through the institution where he is incarcerated, but that he has no other income or property of value.

¹ Docket entry references are to the criminal case.

The foregoing information demonstrates that although Appellant cannot afford to prepay the \$455 appellate filing fee, he can pay the fee in installments without undue hardship. While his appeal is not governed by the Prison Litigation Reform Act, there is no prohibition against collection of the appellate filing fee in installments where an inmate has the ability to pay in installments without undue hardship. Accordingly, Appellant's motion to proceed *in forma pauperis* (D.E. 208) is GRANTED and the following orders are entered:

1. The Clerk shall file the Appellant's notice of appeal without prepayment of the appellate filing fee.
2. The Appellant is not required to pay an initial partial appellate filing fee.
3. The Appellant shall pay \$455, the full appellate filing fee, in monthly installments to the United States District Court.
4. The Bureau of Prisons shall deduct 20% of each deposit made to the Appellant's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00.
5. The Appellant shall execute all consents and other documents required by the agency having custody of the Appellant to authorize the necessary withdrawals from his trust account.
6. The Clerk shall send a copy of this Order to the Inmate Accounting Officer and Paralegal Specialist, FCI Three Rivers, P.O. Box 4000, Three Rivers, Texas 78071.

NOTICE TO THE APPELLANT:

This Order does not automatically reinstate your appeal. You must still petition the Fifth Circuit to reinstate your appeal in order to proceed with your appeal. Also, if you do not wish to pay the appellate filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute the appeal. Your notice must be mailed within 30 days of the date of this Order.

ORDERED this 21st day of March, 2007.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE